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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

APR 28 2011

Uniform Issue List: 402.00-00

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SE:T:EP:RA:T

Legend:

Taxpayer A = XXXXXXXXXXXXXXXX

Plan X = XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Financial Advisor B = XXXXXXXXXXXXXXXX

Financial Institution C = XXXXXXXXXXXXXXXX

Account Y = XXXXXXXXXXXXXXXX

IRA X = XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Financial Institution D = XXXXXXXXXXXXXXXX

Amount N = XXXXXXXXXXXXXXXX

Amount O = XXXXXXXXXXXXXXXX

Date 1 = XXXXXXXXXXXXXXXX

Date 2 = XXXXXXXXXXXXXXXX

Date 3 = XXXXXXXXXXXXXXXX

Date 4 = XXXXXXXXXXXXXXXX

XXXXXXXXXXXX

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Dear XXXXXXXX:

This is in response to your letter dated June 30, 2010, as supplemented by correspondence dated September 20, 2010, January 28, 2011, and March 31, 2011, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalties of perjury in support of your ruling request.

On Date 1, Taxpayer A, age 60, received a distribution of Amount N from Plan X which she intended to roll over into an IRA which had been established at Financial Institution C. Taxpayer A asserts that, due to an error by Financial Advisor B, Amount N was not rolled over timely into an IRA.

On Date 1, Plan X issued a check payable to Taxpayer A for Amount N. The check for Amount N represented the lump sum payment minus 20 percent federal withholding tax of the non-annuity portion of Taxpayer A's retirement benefit in Plan X. Plan X distributed Amount N to Taxpayer A pursuant to the distribution method Taxpayer A had elected when she filed for retirement.

Prior to Date 1 but a few months after Taxpayer A had filed her retirement papers, Taxpayer A met with Financial Advisor B of Financial Institution C who advised Taxpayer A to rescind her election to have the non-annuity portion of Plan X distributed to her, and to elect, instead, to have the non-annuity portion of Plan X rolled over directly from Plan X into an IRA to be maintained at Financial Institution C.

Taxpayer A contacted Plan X and filed paperwork to change her election of distribution method to a direct rollover, however, because Plan X had already begun to process Taxpayer A's non-annuity payment in accordance with her initial election, and in spite of efforts by both Taxpayer A and Financial Advisor B to persuade Plan X to perform the direct rollover to Financial Institution C, Taxpayer A received a check for Amount N on Date 1 as Plan X's final decision on the matter.

Documentation shows that during a meeting between Financial Advisor B and Taxpayer A, Financial Advisor B, in anticipation of the direct rollover from Plan X, established an IRA at Financial Institution C on behalf of Taxpayer A. On Date 2, the check for Amount N was presented to Financial Advisor B who deposited Amount N into Account Y (a non-IRA account) at Financial Institution C, instead of into the IRA which had been established months earlier to receive the direct rollover from Plan X.

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Taxpayer A represents that at the time she presented the check from Plan X to Financial Advisor B, he informed Taxpayer A that since taxes had been withheld from the payment, it did not matter as to which type of account Amount N could be deposited.

Taxpayer A asserts that she relied on Financial Advisor B and that she believed that Amount N was tax-sheltered in Account Y. During Date 3 when Account Y experienced significant losses, Taxpayer A transferred Amount O (the remainder of Amount N) to an account maintained at Financial Institution D. On Date 4, Financial Institution D placed Amount O into IRA X.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution of Amount N.

Section 402(c)(1) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3)(B) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

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The information presented and documentation submitted is consistent with your assertion that Taxpayer A's failure to accomplish a timely rollover of Amount N into an IRA was caused by an error by Financial Advisor B.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount N from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount N less Amount O into a rollover IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met, the contribution of Amount N will be considered a valid rollover contribution within the meaning of section 402(c)(3) of the Code. In addition, the contribution of Amount O into an IRA on Date 4 will be considered a valid rollover contribution within the meaning of section 402(c)(3) of the Code.

This ruling assumes Plan X satisfied the qualification requirements of section 401(a) of the Code at all times relevant to this transaction.

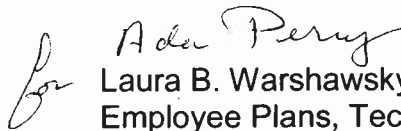
No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact XXXXXXXX, ID Number XXXXXX, by telephone at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T.

Sincerely yours,

 Laura B. Warshawsky, Manager
Employee Plans, Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose